

**SERVICE AGREEMENT
BETWEEN THE CITY OF SUNNYVALE AND INFOSEND, INC.,
FOR UTILITY BILLING SERVICES**

THIS AGREEMENT, dated March 18, 2004, is by and between the CITY OF SUNNYVALE, a municipal corporation ("CITY"), and INFOSEND, INC., a California corporation ("CONTRACTOR").

WHEREAS, CITY is in need of specialized services in relation to utility billing, including designing, printing, inserting and mailing CITY's utility bills; and

WHEREAS, CONTRACTOR possesses the skill and expertise to provide the required services;

NOW, THEREFORE, THE PARTIES ENTER INTO THIS AGREEMENT.

1. Services by CONTRACTOR

CONTRACTOR shall provide services in accordance with Exhibit "A" attached and incorporated by reference.

2. Time for Performance

The term of this Agreement shall be one year, commencing on the date of Agreement execution, unless otherwise terminated. CONTRACTOR shall deliver the agreed upon services to CITY as specified in Exhibit "A". Agreement may be extended for two additional consecutive two-year periods at the option of CITY.

3. Duties of CITY

CITY shall supply any documents or information available to City required by CONTRACTOR for performance of its duties. Any materials provided shall be returned to CITY upon completion of the work.

4. Compensation and Invoicing

CITY agrees to pay CONTRACTOR at the rates set forth in Exhibit "B" attached and incorporated by reference. Total compensation shall not exceed Fifty Thousand and no/100 Dollars (\$50,000.00).

Invoices shall be issued no more frequently than monthly. Payment will be made within thirty (30) days of receipt of an accurate, itemized invoice by CITY's Accounts Payable Unit.

5. Ownership of Documents

CITY shall have full and complete access to CONTRACTOR's working papers and other documents during progress of the work. All documents of any description prepared by CONTRACTOR shall become the property of the CITY upon payment in full to the CONTRACTOR.

6. Conflict of Interest

No officer or employee of CITY shall have any interest, direct or indirect, in this Agreement or in the proceeds thereof. During the term of this Agreement, CONTRACTOR shall not accept employment or an obligation which is inconsistent or incompatible with CONTRACTOR's obligations under this Agreement.

7. Confidential Information

CONTRACTOR shall maintain in confidence and at no time use, except to the extent required to perform its obligations hereunder, any and all proprietary or confidential information of CITY of which CONTRACTOR may become aware in the performance of its services.

8. Compliance with Laws

(a) CONTRACTOR shall strictly adhere to all state and federal laws with respect to discrimination in employment and shall not discriminate against any individual on the basis of race, color, religion, gender, sexual orientation, marital status, national origin, age or disability.

(b) CONTRACTOR shall comply with all federal, state and city laws, statutes, ordinances, rules and regulations and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of the Agreement.

9. Independent Contractor

CONTRACTOR is acting as an independent contractor in furnishing the services or materials and performing the work required by this Agreement and is not an agent, servant or employee of CITY. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between CITY and CONTRACTOR. CONTRACTOR is responsible for paying all required state and federal taxes.

10. Indemnity

CONTRACTOR agrees to indemnify, defend and hold harmless CITY and its officers, officials, employees and volunteers from and against claims, damages, losses and expenses, including attorney fees, arising out of the performance of the work described herein, caused in whole or in part by any negligent act or omission of CONTRACTOR, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except where caused by the active negligence, sole negligence, or willful misconduct of CITY.

11. Insurance

CONTRACTOR shall take out and maintain during the life of this Agreement policies of insurance as specified in Exhibit "C" attached and incorporated by reference, and shall provide all certificates and endorsements as specified in Exhibit "C."

12. CITY Representative

Tim Kirby, Finance Manager, as the City Manager's authorized representative, shall represent CITY in all matters pertaining to the services to be rendered under this Agreement. All requirements of CITY pertaining to the services and materials to be rendered under this Agreement shall be coordinated through the CITY representative.

13. CONTRACTOR Representative

Monica Moctezuma, Sales Executive, shall represent CONTRACTOR in all matters pertaining to the services and materials to be rendered under this Agreement; all requirements of CONTRACTOR pertaining to the services or materials to be rendered under this Agreement shall be coordinated through the CONTRACTOR representative.

14. Notices

All notices required by this Agreement shall be in writing, and shall be personally delivered, sent by first class with postage prepaid, or by sent by commercial courier, addressed as follows:

To CITY:	Tim Kirby, Finance Manager
	CITY OF SUNNYVALE
	P. O. Box 3707
	Sunnyvale, CA 94088-3707

To CONTRACTOR:

Carlyn Appleby, Account Executive
Monica Moctezuma, Sales Executive
INFOSEND, INC.
1041 S. Placentia Avenue, Suite 100
Fullerton CA 92831-5105

Nothing in this provision shall be construed to prohibit communication by more expedient means, such as by telephone or facsimile transmission, to accomplish timely communication. However, to constitute effective notice, written confirmation of a telephone conversation or an original of a facsimile transmission must be sent by first class mail or commercial carrier, or hand delivered. Each party may change the address by written notice in accordance with this paragraph. Notices delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of two days after mailing, unless such date is a date on which there is no mail service. In that event communication is deemed to occur on the next mail service day.

15. Assignment

Neither party shall assign or sublet any portion of this Agreement without the prior written consent of the other party.

16. Termination

If CONTRACTOR defaults in the performance of this Agreement, or materially breaches any of its provisions, CITY at its option may terminate this Agreement by giving written notice to CONTRACTOR. If CITY fails to pay CONTRACTOR, CONTRACTOR at its option may terminate this Agreement if the failure is not remedied by CITY within thirty (30) days from the date payment is due.

Without limitation to such rights or remedies as CITY shall otherwise have by law, CITY also shall have the right to terminate this Agreement for any reason upon ten (10) days' written notice to CONTRACTOR. In the event of such termination, CONTRACTOR shall be compensated in proportion to the percentage of services performed or materials furnished (in relation to the total which would have been performed or furnished) through the date of receipt of notification from CITY to terminate. CONTRACTOR shall present CITY with any work product completed at that point in time.

17. Entire Agreement; Amendment

This writing constitutes the entire agreement between the parties relating to the services to be performed or materials to be furnished hereunder. No modification of this Agreement shall be effective unless and until such modification is evidenced by writing signed by all parties.

18. Miscellaneous

Time shall be of the essence in this Agreement. Failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision. This Agreement shall be governed and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement.


CITY OF SUNNYVALE ("CITY")

By 
Acting City Manager

APPROVED AS TO FORM:

INFOSEND, INC. ("CONTRACTOR")

By 
City Attorney

By 
MAHOOD REZA, President
Name and Title

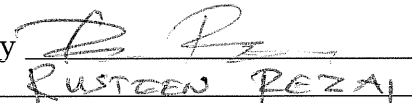
By 
RUSTEEN REZA
Name and Title

EXHIBIT "A"
SCOPE OF SERVICES

Required Services

On a regularly scheduled basis, CITY will extract billing information from the HTE Utility Billing System and export data to CONTRACTOR. It is likely the data will be exported in a flat file. However, CONTRACTOR must be able to accept and manipulate electronic data in a variety of formats and use this data to produce accurate and timely hardcopy utility bills for CITY's utility customers.

CONTRACTOR shall provide bill and envelope stock; print utility bills using a two-color process; print a variety of bill inserts, upon request; insert utility bills, up to three inserts (printed by CONTRACTOR or provided by CITY) and #9 printed return envelopes into #10 window envelopes; and deliver the bills to the post office for mailing. Utility bill inserts are commonly two colors on 8" x 3" card stock although occasionally another format is required. Postage will be paid by CITY or, if agreed upon by both parties, may be billed to CITY by CONTRACTOR.

CONTRACTOR shall comply with the CITY's Environmental Procurement Policy to minimize the environmental impact of services performed under this Agreement.

Set Up

Prior to commencement of services, CONTRACTOR shall:

1. Perform initial programming to accept data from CITY 's HTE Utility Billing System and print utility bills, including special messages, as required.
2. Work with CITY to determine if utility bill format will be redesigned or if the existing format will continue to be used.
 - A. If a decision is made to redesign the bill, CONTRACTOR shall complete the redesign to meet the requirements set forth in the following section titled "Utility Bill Specifications" and submit the redesigned utility bill to CITY for approval. Following CITY approval, CONTRACTOR shall print, at CONTRACTOR's expense, and store a supply of forms and envelopes. This supply shall be maintained in sufficient quantity throughout the term of the Agreement, including extensions, if any, to preclude an interruption in utility billing services due to a shortage of forms and/or envelopes.
 - B. If the decision is made to continue to use the existing format, CONTRACTOR shall use CITY's existing form stock and envelopes until depleted.

Following depletion of existing inventory, replacement form stock and envelopes shall be provided by CONTRACTOR at CONTRACTOR's expense.

Utility Bill Specifications

Should a decision be made to redesign CITY's utility bill, CONTRACTOR shall design a bill that meets the following specifications:

Payment Coupon shall include:

- Bill Date
- Payment Date
- Account Number
- Balance Due
- Enter Amount Enclosed
- City information including phone numbers
- Customer Address
- City Address
- OCR Number
- Postal Bar Code
- City logo.

Billing Statement shall include:

- Account Summary, including Account Number, Billing Period, Service Location, Previous Payment, Penalties and Adjustments, Balance Forward, Current Charges, and total amount due.
- Water Service Detail, including Meter number, Read Type, Read Date, Previous Reading, Current Reading, Number of Days, Consumption, breakdown of charges by tier rate, Total Water Charges.
- Sewer Service Detail, including Service Type, Number of Days, Usage, Total Sewer Charges Due.
- Refuse Service Detail, including type and frequency of service, Number of Days, Usage detail, and Total Refuse Service Due.
- Special Message Line(s).

Other Bill Specifications

- Back of bill print shall match existing bill.
- Bill shall be printed using a two-color process in order to color highlight key data as specified by CITY .
- Bill shall include a rolling twelve-month consumption graph.
- Bill may extend onto two or more pages.

All artwork, layouts, plates, negatives, and proofs produced in the performance of services under this Agreement shall be the property of CITY.

Printing, Mailing and Delivery

CONTRACTOR shall be capable of accepting electronic billing data from CITY on any day at any time. If CONTRACTOR receives the billing data from CITY on or before midnight, a completed prepared bill mailing shall be delivered to the post office by the close of the next business day.

CONTRACTOR must be capable of accepting artwork for inserts in electronic format and printing inserts in a variety of formats.

CONTRACTOR and CITY shall negotiate a data transfer, printing and mailing schedule agreeable to both parties. CONTRACTOR must be capable of printing and mailing up to 1,500 bills per day. Outgoing mail must include zip + 4 bar-coding, and CONTRACTOR must have the ability to Cass certify and carrier route sort to obtain the lowest possible postage rate.

CONTRACTOR must have the ability to distinguish between unique types of bills and be able to pull specific bills, or groups of bills (e.g. bills for City facilities), for direct delivery to CITY, upon request, instead of to the post office. CONTRACTOR must also have the ability to deliver statements for customers with automatic payment without a return envelope.

Other Required Services

CONTRACTOR shall warehouse forms and envelopes, until needed or used, at a location that provides security and supervision from start to finish, including a well-defined quality control assurance program.

CONTRACTOR shall have the ability to provide courier services and to pick up/deliver on a tight time frame.

Optional Services

In addition to all required services, other services may be provided under this Agreement as required to by both parties.

Cost Breakdown:

<u>Service</u>	<u>Cost</u>
Bill Design & Consultation	\$0.00
Program Setup	\$0.00
Minimum File Download Fee	\$0.00
Occasional Program Format Changes	\$0.00
First Class Presorted Postage Cost	\$0.278 - .309 maximum
Per Piece Cost (volume approximately 16,000/month)	\$0.135* <u>\$0.155</u> <i>ecw</i>
Address Change Service (optional) -See detail in Other Optional Services	\$0.60 per address
Courier/Pick-Up Fees (optional)	Pass through cost**
Electronic Bill Presentment and/or Payment (optional) -Please speak with your sales executive to learn about the many options to choose from.	
Inserts (optional) -Please submit specifications for more pricing. Listed below are a few of the standard insert specs.	

Paper Size/Stock	Simplex /Duplex	Toner/Press Color	Printed by	Cost
Any size, pre-folded by City	N/A	N/A	CITY	\$0.01
Any size, pre-folded by City, requires selective inserting	N/A	N/A	CITY	\$0.02
1/3 of 8.5x11", 24lb color paper	Simplex	Black printing	InfoSend	\$0.06
1/3 of 8.5x11", 24lb color paper	Duplex	Black printing	InfoSend	\$0.08
8.5x11", 24lb white paper	Simplex	Black printing	InfoSend	\$0.08
8.5x11", 24lb white paper	Duplex	Black printing	InfoSend	\$0.12

(*)Includes inserting and mailing with bills.

* Includes Preprinted 2-color custom form with backside preprinted verbiage, standard security-tinted #10 window envelope, standard security-tinted #9 window envelope, processing, CASS certified address validation, electronic presorting, selective PDF files to approve each file if desired, manual quality control, folding, inserting, same day delivery to the post office.

** InfoSend will make necessary arrangement for pick up and delivery of materials, where applicable, via the best possible service and most economical cost, as a cost pass through item.

Proposal Contents authorized by:



Mahmood Rezai, President

EXHIBIT "C"
INSURANCE REQUIREMENTS

CONTRACTOR shall obtain, at its own expense and from an admitted insurer authorized to operate in California, the insurance coverage detailed below and shall submit Certificate(s) of Insurance to the City of Sunnyvale, Purchasing Division, 650 West Olive Ave, PO Box 3707, Sunnyvale, CA 94088-3707; fax (408) 730-7710.

CONTRACTOR shall take out and maintain during the life of the contract **Workers' Compensation and Employer's Liability Insurance** for its employees. The amount of insurance shall not be less than \$1,000,000 per accident for bodily injury or disease.

CONTRACTOR shall take out and maintain during the life of the contract such **Commercial General Liability Insurance** as shall protect CONTRACTOR, CITY, its officials, officers, directors, employees and agents from claims which may arise from services performed under the contract, whether such services are performed by CONTRACTOR, by CITY, its officials, officers, directors, employees or agents or by anyone directly or indirectly employed by either. The amount of insurance shall not be less than the following: Single Limit Coverage Applying to Bodily and Personal Injury Liability and Property Damage: \$1,000,000.

The liability insurance shall include, but shall not be limited to:

- Protection against claims arising from bodily and personal injury and damage to property, resulting from CONTRACTOR's or CITY's operations and use of owned or non-owned vehicles.
- Coverage on an "occurrence" basis.
- Broad form property damage liability. Deductible shall not exceed \$5000 without prior written approval of CITY.
- Notice of cancellation to CITY's Purchasing Division at least thirty (30) days prior to the cancellation effective date.

The following endorsements shall be attached to the liability insurance policy, and copies shall be submitted with the Certificate(s) of Insurance:

- The policy must cover complete contractual liability. Exclusions of contractual liability as to bodily injuries, personal injuries and property damage must be eliminated.
- CITY must be named as additional named insured with respect to the services being performed under the contract. *Simply indicating on the certificate that the certificate holder is named as additional insured is not acceptable; an endorsement must be provided.*
- The coverage shall be primary insurance so that no other insurance effected by CITY will be called upon to contribute to a loss under this coverage.